CITY OF MORGAN HILL

MEMORANDUM

To: **CITY COUNCIL**

Date: July 7, 2004

From: **COMMUNITY DEVELOPMENT DEPARTMENT**

Subject: **ORDINANCE AND RESOLUTION FOR THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE INSTITUTE GOLF COURSE AND MATHEMATICS CONFERENCE CENTER**

BACKGROUND

The Institute Golf Course Final EIR and Zoning Amendment applications are scheduled for City Council consideration at the July 7, 2004. This item was continued from a special City Council meeting on June 9, 2004, to allow the applicant an opportunity to submit documentation in the EIR administrative record in support of alternative mitigation measures presented at the June 9 meeting. Staff met with the applicant on June 18, 2004 and again with their attorney and environmental consultant on July 1, 2004 to review and discuss the applicant's equivalent mitigation. The July 1st meeting also included the City's environmental consultants. A consensus was reached at the July 1 meeting regarding the equivalent mitigation that could be supported based on information contained in the administrative record. The agreed upon changes are incorporated in the revised Exhibit "C" to the attached Resolution. The following is a brief description of the changes:

1. Vegetated Buffers Around Ponds. The EIR recommends all ponds on site have a buffer around the pond of at least 10 feet in width to protect the Red-legged Frog and to provide a bio-filter to protect the water quality. A means to achieve this is to provide a 10 foot area of tall un-maintained grasses. The applicant objected to this requirement where the 10 foot buffer area would be located adjacent to the areas of play. The tall grass would obstruct views of the ponds and would trap golf balls that would otherwise roll into the pond when poorly hit. In lieu of the tall grass, it was agreed that other methods such as planted ground cover or mulch, could be used to achieve the same result, and would minimize interference with play on the golf course. Condition 2D on page 2 of the Exhibit "C" was changed to reflect this agreement.

2. Water Quality Setbacks. The EIR recommends a water quality setback of 50 feet from the centerline of Corralitos Creek and tributaries. The applicant at the June 9 meeting requested that the water quality setback be measured 30 feet from the highest anticipated water line of the creek as determined by the State Regional Water Quality Control Board. The City's EIR consultant

agreed that this would be equivalent to the 50 foot setback from center line of the creek. Condition 2E on page 2 of Exhibit "C" was revised to reflect this change.

3. Encroachment into the Riparian Habitat Setback Areas. The EIR recommends a 100-foot activity setback be established from the edge of the high quality riparian habitat, and a 25 foot setback be established from lower quality riparian areas. This mitigation would require alteration to the course including relocating the second green and the tee boxes for the third hole. As an alternative, it was agreed that tees and greens that are retained in the encroachment area can be mitigated by the re-establishment and protection of riparian habitat at a 2:1 ratio that is within three miles of the encroachment and within the Llagas Creek watershed. This change is incorporated into condition 5G on page 4 of Exhibit "C"

Other changes to Exhibit "C" were made for consistency purposes or to clarify the intent of the specific conditions.

Attached to this memorandum is the revised Resolution certifying the EIR and the revised Ordinance approving the Zoning Amendment request. Environmental mitigation that is not currently part of the project is incorporated as conditions of approval in the revised Exhibit "C" to the Zoning Amendment Ordinance

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ORDINANCE NO. ___, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND 825-30-007)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental impact report has been prepared for this application and has been found complete, correct and in substantial compliance with the California Environmental Quality Act.

SECTION 4. The City Council hereby approves a precise development plan as contained in that certain series of documents dated March 3, 2003 on file in the Community Development Department, entitled "American Institute of Mathematics" prepared by Stotler Design Group. These documents, as amended by site and architectural review, show the exact location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

SECTION 5. The City Council hereby amends the City Zoning Map as shown in attached Exhibit "A."

SECTION 6. Approval of The Institute PUD shall allow the specific uses identified in the applicant's "Use Data Table", attached hereto as Exhibit "B", and by this reference incorporated herein. Those uses shall include the following:

1. AIM Research Center (includes research facility, library, conference rooms, guest suites, lecture halls, food service, offices, pro shop, locker rooms) (59,000 square feet)
2. Golf course (128 acres)
3. Residence
4. Offices
5. Lecture hall
6. Caretaker's quarters

7. Equipment storage
8. Maintenance sheds
9. Food service
10. Guard building
11. Pro shop
12. Restrooms
13. Open Space

SECTION 7. Development of this PUD shall be in accordance with the development standards for PUDs, Chapter 18.30 of the Zoning Code, identified herein by reference in the resolution.

SECTION 8. Approval of this PUD does not include approval of "charity golf tournaments" as identified in the applicant's use table, as such use has not been evaluated for its potential environmental impacts. Such use will require amendment to the approved PUD upon further environmental review.

SECTION 9. Conditions of Approval. The Zoning Amendment hereby approved shall be subject to the conditions contained in the attached Exhibit "C."

SECTION 10. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 11. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of July 2004, and was finally adopted at a regular meeting of said Council on the 21st Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST: **APPROVED:**

Irma Torrez, City Clerk **Dennis Kennedy, Mayor**

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of July 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

EXHIBIT "C":

Conditions of Approval, including Mitigation Measures not presently Incorporated into the Proposed Project.

_____ 1. A geotechnical report prepared by a certified engineering geologist or civil engineer shall be submitted for review and approval by the City of Morgan Hill Director of Public Works to verify the stability of the existing earthwork on the project site, except for the berm along Foothill Avenue and the berm along the southern edge Pond G. If the existing earthwork is not found to be structurally sound and capable of resisting erosion and/or collapse, the grades shall be reworked in conformance with an engineered plan approved by the Director of Public Works.

_____ 2. Red-legged Frog Mitigation Measure Package I

A. Implement USFWS Mitigation Recommendations - Implement all mitigation measures included in the USFWS letter of July 15, 2003 (Appendix C of this EIR) to reduce impacts to the California red-legged frog, as summarized below:

1. Purchase 51 acres of currently unprotected serpentine habitat and fund its management as habitat in perpetuity.

2. Purchase 51.2 acres of currently unprotected California red-legged frog habitat and fund its management as habitat in perpetuity.

3. A riparian buffer with an average width of 70 feet and a minimum width of 30 feet will be planted and maintained on each side of Corralitos Creek and its tributaries, measured from the centerline of the creek.

4**.** As stated in the July 15, 2003 letter from the USFWS, the 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after evaluation the City of Morgan Hill agrees with the USFWS that this 35 acres of replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat due to exceptional quality, and also provides 35 acres of red-legged frog habitat, then only16.2 additional acres of currently unprotected red-legged frog habitat will need to be purchased and funded for management as habitat in perpetuity.

B. Manage Non-Native Predator Species - Bullfrogs and large mouth bass are non-native predators that reduce the long-term viability of a California red-legged frog population. Although only one bullfrog was detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) dry out any ponds that contain bullfrogs for two to three weeks in late September/early October on an annual basis. Only ponds that are found to contain one or more bullfrogs need to be drained. The timing of the draw down will be phased to ensure that California red-legged frogs will continue to have available suitable wet

areas. Pond draining disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs.

C. Vegetated Buffers Around Ponds - All ponds on site shall have a buffer around the pond perimeter of at least 10 feet in width, which may consist of un-maintained dense grasses, planted ground cover or mulch, so long as the criteria set forth herein are satisfied. This buffer will not be mowed or maintained with mechanized equipment, nor will any chemicals or fertilizers be applied to the surface, and it will be designed to absorb and retard surface flow and to act as a filter for the surface flow. The buffers shall be subject to the approval of the City to ensure that they satisfy these criteria. Fertilizer may be applied if necessary through a below ground drip irrigation system. This buffer is significantly narrower than the buffer cited under Mitigation Package II because Mitigation Package I also provides for substantial additional off-site habitat benefits as described in USFWS letter dated July 15, 2003 that compensate for the smaller on-site buffer areas.

D. Maintain Water Quality of Breeding Ponds/Establish Vegetated Shelves Around Ponds - Water quality shall be monitored monthly for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the California red-legged frog. Shallow water shelves shall be constructed and vegetated with native emergent vegetation around the perimeter of ponds A, B, C, D, E, F and G. Native emergent vegetation shall be established on at least 50 percent of the total linear fee of pond edge (Exhibit ___) and shall be approximately 5 to 10 feet in width. These vegetated shelves will provide refugia and breeding habitat for the California red-legged frogs. This vegetation will also provide some biological filtering of run-off water. Catch basins and other storm drain outlets shall not empty directly into any drainages leading to these ponds, but rather, flow through vegetated buffers, filter strips, swales, or other treatment measures which provide equivalent filtration and are subject to the approval of the City, prior to entering ponds or empty downstream of any waterways associated with potential breeding habitats. If any further grading occurs, silt fences, fiber rolls, or other structures shall be installed to ensure that run-off from the operations does not flow directly into these breeding areas.

E. Water Quality Setback from Corralitos Creek - Both the USFWS and H.T. Harvey and Associates identified buffers to avoid wildlife disturbance. As stated in Section II., D., Hydrology and Water Quality of this EIR, a minimum setback is necessary to avoid significant impacts to the creek from pollutants in surface runoff. This "setback area" shall be either (1) 50 feet from the centerline of Corralitos Creek and tributaries, or (2) 30 feet as measured along the ground surface to the highest anticipated water line of the Creek and tributaries as jointly determined by the RWQCB and the City.

F. To reduce the water quality setback area required in Section 2.E without resulting in significant water quality impacts, the areas adjacent to the on-site creek channels shall drain away from the creek. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a drainage system that drains to the creek or the internal ponds consistent with Section 2.D above. This reduction shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the setback area required by Section 2.E for Corralitos Creek and all tributaries within the boundaries of

the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the setback area required by Section 2.E for all of the creek channels on the project site will be regarded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstance shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek, except for the fairway of the 6th hole, as described below.

1. The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above in Section 2.F for reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.

G. All mechanized equipment used to maintain the grounds shall only be used during the daylight hours.

H. Monitoring of the on-site population of red-legged frogs shall be done for at least five years after implementation of the program, and the results of the monitoring reports to the City of Morgan Hill and the USFWS.

_____ 3. California Tiger Salamander Mitigation Measure Package I

A. Mitigation Measure Package I as described above for the California red-legged frog shall also provide adequate mitigation for the California tiger salamander.

_____ 4. Western Pond Turtle Mitigation Measure Package I

A. Mitigation Package I as described previously for the California red-legged frog shall also provide adequate mitigation for western pond turtles.

_____ 5. Riparian Habitat

A. The riparian habitat and drainages offer different wildlife values, therefore, a 25-foot setback from the lower-quality riparian habitat, and a 100-foot setback from the higher quality riparian habitat is necessary to protect the remaining riparian corridor that is well vegetated and of higher quality, except where mitigation for reduction in the riparian setback is provided as required in paragraph G below;

B. The setback area shall be established as a riparian buffer planting zone with native trees and shrubs, such as native oaks and willows. The landscape plans shall be reviewed and approved by a qualified botanist or restoration biologist under contract with the City with services paid for by the project proponent;

C. Lighting within the setback areas should be avoided. Lighting associated with the proposed project shall be designed, sited and shielded to minimize light and glare impacts to wildlife within the riparian corridor; and

D. Human access shall be restricted within the riparian corridor. Signs explaining the sensitivity of riparian corridors will be posted along the riparian corridor particularly near possible or likely access points. The property owner will promulgate rules of play that prohibit entering the riparian corridor.

E. It should be noted that the riparian corridor setbacks described above are different than the creek setbacks described previously to protect special-status species (red-legged frog, tiger salamander, and western pond turtle). The riparian corridor setbacks (100 feet for high quality riparian habitat and 25 feet for low quality riparian habitat) are measured from the edge of the riparian corridor. The setbacks for impacts to special-status species are measured from the centerline or highest anticipated water line of the creek channels.

F. The riparian setbacks identified above (100 feet from high quality habitat, 25 feet from poor quality habitat) are methods for reducing or avoiding habitat degradation. If encroachment within the identified setbacks is allowed by the City, mitigation (described below) shall be required to offset the impacts to habitat quality that would result from the encroachment.

G. Mitigation for Reduction of Riparian Habitat Setbacks: An area of riparian habitat that is equivalent in size to the area of the encroachment(s) proposed into the setbacks, shall be provided at a 1:1 ratio elsewhere along the same drainage. Uses or activities within the encroachment areas within the 100-foot riparian setbacks should be limited to roughs and fairways to within 25 feet of the edge of the riparian habitat; un-maintained rough may be as close as 15 feet to the edge of the riparian habitat. The tees and greens that are retained in the encroachment area will be mitigated by the re-establishment and protection of riparian habitat at a 2:1 ratio (replacement:impacted) that is within three miles of the encroachment and within the Llagas Creek watershed. A revegetation and maintenance plans prepared by a qualified revegetation ecologist that illustrates: (a) all planting within 100 feet of the edge of the riparian habitat lost, and (2) all replacement riparian habitat proposed as mitigation for riparian habitat lost and for encroachments into the riparian habitat setback, shall be submitted to and approved by the City of Morgan Hill as part of the Site, Architectural and Landscape Plan Review process.

H. Prior to approval of a grading permit for the subject property, the project proponent shall be required by the City of Morgan Hill to obtain from the U.S. Army Corps of Engineers, and provide to the City of Morgan Hill Director of Planning, a determination that no jurisdictional wetlands will be impacted by the proposed grading or construction.

_____ 6. Off-site Flooding and Drainage

A. In order to mitigate the localized flooding problems at Foothill Avenue in the vicinity of the entrance road caused by the project, the project proponent shall re-design the drainage system for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions and prevent uncontrolled runoff onto Foothill Avenue within the frontage area of the project site. This shall require the following:

1. Redesign the drainage system to provide storm water detention capability for the runoff from the Maintenance drainage area in order to assure that the peak runoff flow from this area of the site does not cause concentrated uncontrolled runoff onto Foothill Avenue; this shall include a revised hydrologic analysis verifying adequate capacity for the relevant sections of the storm drain system, and updated detention analysis for Lakes A through E;

2. The redesign of the on-site drainage system for the project site, including the revised drainage analysis and detention basin analysis, shall be subject to review and approval by the Santa Clara Valley Water District and the City of Morgan Hill.

_____ 7. Soil Erosion

A. Erosion and sedimentation impacts from the proposed project would generally result from construction on the site. It is also likely that on-going maintenance of the golf course will occasionally include excavating, drainage and grading work. Construction-related erosion and sedimentation shall be mitigated by the implementation of the following measures:

B. The project proponent shall apply for and obtain the applicable state permits under the National Pollutant Discharge Elimination System (NPDES), as required by the State Water Resources Control Board for any grading of more than one acre; this includes the preparation of a Storm Water Pollution Prevention Plan prior to any additional work necessary to reduce flooding and drainage impacts.

C. The project proponent shall prepare an Erosion Control Plan for review and approval by the City of Morgan Hill and the Central Coast RWQCB prior to any construction or grading on the site. Erosion control measures shall be established in conformance with the City of Morgan Hill Grading Ordinance, RWQCB regulations, and local guidelines for non-point source runoff Best Management Practices for construction. The Erosion Control Plan shall include the following measures:

1. use of fiber rolls and temporary sedimentation basins to retain sediment on the project site;

2. protecting all finished graded slopes from erosion through re-vegetation, drainage diversion, and other appropriate methods;

3. protecting any downstream storm drainage inlets from sedimentation; and

4. No construction activity that includes grading, soil movement or excavation, or which may result in any soil erosion shall occur during the winter rainy season (October 15th to April 15th), without written approval from the City Engineer for the City of Morgan Hill.

D. Inspection shall be conducted by City of Morgan Hill during the construction period to ensure that the erosion control techniques are performing as designed. Erosion control features shall be checked after major winter storm events.

E. Following completion of construction, the roadside drainage ditches and stream channels that border and run through the project site shall be inspected for accumulated sediment. The project proponent shall be responsible for the clearing of accumulated debris and sediment within these channels prior to each winter rain.

F. Following construction, a program shall be established for insuring maintenance of culverts, drain inlets, energy dissipaters, etc., and for erosion control during maintenance grading activities in conformance with the Santa Clara County Grading Ordinance, RWQCB regulations, and Non-Point Source Program Best Management Practices.

_____ 8. Water Quality

A. Non-Point Source Runoff Pollutants

1. Provide containment dikes around maintenance areas, and provide roofing over any area where the potential for oil, grease and fuel spillage is high;

2. Provide oil/grease separators for all catch basins the parking area drainage system;

3. Monitor the grounds to control litter and other debris that could be washed into the on-site ponds or drainages (i.e., weekly street sweeping, oil spill clean-up, etc.);

4. Modify the golf course design along the riparian corridor of Corralitos Creek to provide the setback area required in Section 2.E that contains only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams. The CHAMP shall include monthly monitoring for water quality and shall contain provisions for reporting of accidental chemical releases.

An alternative to providing the minimum setback area described in Section 2.E above is to ensure that the areas within such setback area drain away from the creek channels. This will allow the water quality setback to be less than the setback area required in Section 2.E without resulting in significant water quality impacts. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a catch basin system that drains to the internal ponds. This mitigation shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the Section 2.E setback area of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the Section 2.E setback area of all of the creek channels on the project site will be regarded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek, except for the fairway of the 6th hole, as described below.

- The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.

5. Adopt and implement as part of on-going site operations, all applicable mitigation measures identified for soil erosion (refer to page 70 of the Revised Draft EIR).

B. Nitrogen Loading

1. The project proponent shall prepare a nitrogen control plan (NCP) which is based upon a determination of appropriate nitrogen application rates, based upon site specific soil testing and plant requirements. The NCP shall be a component of the Chemical Application Management Plan (CHAMP) described under the heading "Pesticides and Herbicides" below.

2. Annual accounting of all sources of nitrogen application rates to the golf course, including fertilizer applications, grass clippings left in place, and nitrogen content of irrigation water.

3. The Nitrogen Control Plan (NCP) shall include sufficient technical analysis, including monitoring data from the initial operation of the golf course, to demonstrate that the fertilizer and irrigation water applications to the golf course will not exacerbate the existing groundwater-nitrate problems in the project vicinity. Specifically, the nitrate loading from all sources shall be demonstrated to not exceed the estimated nitrate loading that would occur from pre-project conditions (i.e., the nitrogen loading on the whole site when it contained a 40-acre golf course, which is estimated in the EIR to be 18.7 to 38.4 mg/L).

4. The project proponent shall submit the Nitrogen Control Plan, including comparison to pre-project nitrate loading estimates, to the Santa Clara Valley Water District (SCVWD) and the Central Coast RWQCB for review and approval, and shall obtain and comply with recommendations provided by these agencies. Additionally, any proposed changes to the fertilizer program, not already addressed in the NCP, shall be submitted to these agencies for review and approval prior to implementation.

5. Nitrogen fertilizer application rates shall be adjusted to account for the nitrate levels in the groundwater-irrigation supply based upon and verified through routine monitoring of irrigation waters. The irrigation water monitoring program shall be in accordance with requirements established by the SCVWD and the RWQCB; at a minimum, the monitoring shall include sampling for nitrate and total kjeldahl nitrogen no less than monthly.

6. Application rates of fertilizers shall be determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil and/or tissue sampling and monitoring program shall be implemented to determine appropriate application rates, in accordance with recommendations provided by the SCVWD.

7. Fertilizer application shall be consistent with the CHAMP. The nitrogen fertilizer shall be slow release or less soluble form, whenever possible.

8. Irrigation of the golf course shall be limited to the calculated crop evapotranspiration rate, plus mineral dilution requirement. Local weather conditions will be taken into consideration. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application.

9. The timing of fertilizer application shall coincide with the period of greatest plant uptake and avoid periods of potential rainfall-runoff events.

10. The overall amount of maintained turf shall be reduced, as needed, in order to minimize the total fertilizer requirements and achieve the goal identified in item #3 above.

11. Modify the golf course design as specified previously, including the provision of the setback area required in Section 2.E of native grasses and non-maintained rough along all branches of Corralitos Creek, within which fertilizers will not be applied.

12. The setback area referenced in Section 8.B.11 above may only be reduced in a manner that is consistent with the restrictions reflected above in the non-point source pollutants setback.

13. Modify the design of the all sub-drains from tees and greens the discharge to Corralitos Creek to provide a minimum 25-foot vegetated buffer between the outfall point and the creek channel, or a filtration system with treatment equivalent to the 25 feet vegetated buffer, as approved by the City.

14. Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the setback area required in Section 2.E above between the turf grass and the creek channel.

15. Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.

C. Pesticide and Herbicides

1. The golf course operator shall prepare a Chemical Application Management Plan (CHAMP). This plan shall detail the procedures to construct, operate and maintain the golf course and shall provide public disclosure regarding pesticides, fertilizers and other chemicals to be used on the golf course, as well as methods of application and handling. The CHAMP shall be subject to review and approval by the City of Morgan Hill and the Central Coast RWQCB. In addition to the measures incorporated into the proposed golf course layout and design, the following provisions shall be considered for inclusion in the CHAMP and reasons identified for a failure to include any measures:

a. Drought, pest, and disease resistant grass species shall be selected;

b. Pesticides shall be handled, applied, and disposed of by a licensed (State-certified) spray technician;

c. Only approved and legal chemicals shall be used. All county, state, and federal guidelines shall be strictly adhered to regarding storage, handling, and application of pesticides;

d. Advanced technology/monitoring equipment shall be used to insure minimal application of pesticides, herbicides, and fertilizers. This equipment shall be maintained and properly calibrated;

e. A controlled and designated area/facility shall be used for the proper mixing and loading of pesticides into application equipment. The facility shall consist of an impermeable pad with controlled and contained drainage, and shall be at least 50 feet from open ditches, ponds or other water bodies. Rinse water shall be properly stored and hauled for disposal at an approved facility.

f. Selection of pesticides shall be based on the ability to achieve treatment goals and criteria to minimize off-site movement. Selection of less toxic, less mobile, and less persistent pesticides shall be a priority management criterion.

g. Pesticide applications shall be carefully timed and combined with other pest management practices; pests shall be accurately identified and pesticide applications made only when necessary, using the least amount required.

h. Pesticides shall not be applied during the rainy season, when soil moisture is high. Applications shall be restricted prior to any anticipated late or early season storm events to preclude potential impacts from runoff.

i. Irrigation applications shall be consistent with turf grass evapotranspiration requirements. Over-watering shall be avoided.

j. As described previously, modify golf course design to provide enhanced vegetative buffer areas for retention of pesticide residue, including the following:

* Modify the golf course design along the riparian corridor of Corralitos Creek to provide the setback area required by Section 2.E above or a modified setback similar to that described under Non-Point Source Runoff Pollutants above, that contain only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams. The CHAMP shall include monthly monitoring for water quality and shall contain provisions for reporting of accidental chemical releases.

* Modify the design of the all sub-drains from tees and greens that discharge to Corralitos Creek, to provide a minimum 25-foot vegetated buffer (non-turf grass) between the outfall point and the creek channel.

* Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the setback area required in Section 2.E above between the turf grass and the creek channel.

k. As described previously in Section 8.A.4 above, there is an alternative to providingthe setback area required in Section 2.E above. To reduce the water quality setback to below such setbacks without resulting in significant water quality impacts, the areas adjacent to the drainage channel shall drain away from the creek. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a catch basin system that drains to the internal ponds. This mitigation shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the Section 2.E setback area of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the Section 2.E setback area of all of the creek channels on the project site will be regarded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek.

- The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.

2. Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.

3. Additionally, the CHAMP shall include a plan and commitment by the golf course owners/operators to provide on-going monitoring of water quality within the stream channels (Corralitos Creek) that flows through the project and within the on-site lakes that have outfalls to the local drainage channel along Foothill Avenue. A monitoring and reporting program shall be established by the RWQCB to enforce this requirement. At a minimum, the water quality sampling shall include monthly sampling of the golf course lakes and stream/drainage channels (above and below the project site) during the rainy season. Sampling shall include nutrients (nitrate and phosphorous) as well as all pesticides used for golf course maintenance. These data shall be reported to the City of Morgan Hill, the Santa Clara Valley Water District, and the Central Coast RWQCB on an annual basis.

4. The CHAMP shall be subject to review and approval or concurrence by the City of Morgan Hill, the SCVWD, and the Central Coast RWQCB (If the RWQCB accepts regulatory authority for the CHAMP, reports to the City and SCVWD may be informational only).

_____ 9. Lake Water Quality Management and Discharges

Implementation of the following measures will reduce impacts associated with lake water quality management and discharges to a less than significant level:

A. The project proponent shall apply for and obtain an NPDES "General Permit for Discharges with Low Threat to Water Quality" from the Central Coast RWQCB for all of the on-site lakes,

except where they are designed and operated to assure no discharge. This will require the submittal of standard information required by the General Permit, in addition to other information that may be required by the RWQCB.

B. If any lakes are used as complete retention lakes, the project proponent shall develop and submit an operations plan, including supporting calculations, operating criteria, and other information as may be deemed necessary by the RWQCB, to verify that the lakes have capacity for and will be operated to contain the 100-year, 60-day runoff from the contributing drainage area.

C. The project proponent shall also include identification of any chemicals added to the lakes for water quality control or other reasons, as provided by Application Requirement 1b (1) in the General Permit. The project proponent shall also comply with all provisions of the General Permit, including monitoring and reporting provisions established by the RWQCB.

_____10. Domestic Water Supply

In order to provide a suitable supply of domestic water for the project one of the following shall be done prior to issuance of building permits for the proposed Mathematics Institute:

A. apply for and obtain approval for connection to an approved public water system, including the completion of any required environmental review for water system extension; or

B. complete a comprehensive investigation and analysis of the hydrogeology and groundwater quality on the site to verify that a supply of domestic water of acceptable quality (per Title 22 Drinking Water Standards) can be provided for the life of the project; the results of this analysis shall be subject to review and approval by the State Department of Health Services and the Santa Clara County Health Department; or

C. modify the project to eliminate the need for provision of a public water supply; a "public water supply" is defined by Title 22 as "... a system for the provision of piped water to the public for human consumption that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year."

D. If the last option is selected, mitigation of the high groundwater-nitrate concentrations will require that the project proponent supply a safe and suitable drinking water supply that complies with all applicable drinking water quality limits; however, this could be met by the project proponent through the inclusion of a water treatment system or importation of certified potable water that will not necessarily qualify as a "public water system".

_____ 11. Fire Protection Water Supply

A. Prior to issuance of building permits for renovating the existing restaurant building for its use as the headquarters for the American Institute of Mathematics, the project proponent shall augment existing water storage facilities on the project site (e.g., construct a water tank) to meet the fire protection water supply requirements as determined by the Fire Chief. The required amount of water shall be a function of building size and construction type.

_____ 12. Groundwater Resource Depletion

The significant impact of the golf course irrigation on groundwater resources in the project vicinity shall be mitigated by implementing one of the following measures:

A. Reduce the amount of irrigated turf within the golf course to a maximum of approximately 85 to 100 acres, or total turf and associate landscaped area, or otherwise reduce the irrigation water demand of the existing golf course by approximately 50 percent. The as-built golf course currently has approximately 128 acres of irrigated turf, including tees, greens, fairways and rough, plus approximately 50 additional acres of irrigated trees and other landscaping. This is a relatively large amount of turf for an 18-hole golf course. There are examples of golf courses recently constructed in the region with as little as 50 acres of irrigated turf. Reduction of the maintained turf areas by this amount will bring the water demand into an approximate balance with the local groundwater recharge conditions, thereby reducing the potential effect on groundwater levels by an equivalent amount. Reduction of the amount of turf will also reduce the fertilizer requirements and the associated groundwater-nitrate impact of the project.

B. While the information currently available indicates that the project could substantially impact groundwater levels, a detailed groundwater investigation shall be used to refine the mitigation (i.e., reduce on-site water use by approximately 50 percent) described above. The project proponent shall complete a much more detailed groundwater investigation to confirm that the proposed pumping of groundwater for golf course irrigation would not cause a significant decline in the water table at neighboring properties. The scope of this investigation will need to include an inventory of existing water wells, pumping rates, water level fluctuations and gradients, aquifer characteristics (e.g., transmissivity and storativity), and recharge rates. From this information, a groundwater budget and hydraulic model shall be developed to estimate the change in groundwater conditions caused by the pumping of groundwater for golf course irrigation. The scope of work and the results of this investigation shall be subject to review and approval by the Santa Clara Valley Water District.

Once the groundwater investigation is complete and approved by the Santa Clara Valley Water District and the City of Morgan Hill, the water usage on the project site shall be adjusted based on the results of the investigation (i.e., either increased or decreased). The groundwater investigation must be completed and approved by the Santa Clara Water District and the City of Morgan Hill within 6 months to avoid interim impacts to the groundwater basin and neighboring properties from the continued excessive use of water on the project site. If the investigation is not completed and approved within 6 months, then water use on the project site shall be reduced by approximately 50 percent, as described above. The Applicant may be required by the City and/or the Water District in the future to conduct additional monitoring and to take corrective action, if necessary, to ensure that no groundwater depletion is occurring.

C. Subject to further research, the use of recycled water to irrigate the golf course could be implemented to reduce the use of groundwater.

_____13. According to the City of Morgan Hill Noise Ordinance, noise-generating construction activities are defined as including, but are not limited to, excavation, grading, paving, demolition, construction, alteration or repair of any building site, street, or highway, delivery or removal of construction material to a site or movement of construction materials on a site. These construction activities are prohibited other than between the hours of 7:00 AM to 8:00 PM, Monday through Friday, and between the hours of 9:00 AM and 6:00 PM on Saturday. Construction activities may not occur on Sundays or federal holidays.

_____14. Construction operations shall use available noise suppression devices and techniques, and equipment shall be properly muffled and maintained.

_____15. The BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices shall reduce construction related air quality impacts to a less than significant level.

A. Dust-proof chutes shall be used for loading construction debris onto trucks.

B. Watering shall be used to control dust generation during demolition of structures and break-up of pavement.

C. Cover all trucks hauling demolition debris from the site.

D. Water all active construction areas at least twice daily.

E. Watering or covering of stockpiles of debris, soil, sand or other materials that can be blown by the wind.

F. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.

G. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking, and staging areas at construction sites.

H. Sweep daily (preferably with water sweepers) all paved access road, parking areas and staging areas at construction sites.

I. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

J. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.

K. enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).

L. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

M. Replant vegetation in disturbed areas as quickly as possible.

_____ 16. Odor Impacts

A. Existing and future grass clippings shall be collected and either: (1) composted on-site at a location and in a manner to be specifically addressed in the Planned Development Rezoning Permit; or (2) hauled to an off-site recycling facility; or (3) left on the golf course to compost "in situ".

_____ 17. Special-Status Plant Species (Serpentine) Habitat

A. Since most of the impacts have already occurred, establishment of a conservation easement is the only mitigation measure available that could reduce this impact to a less than significant level. As recommended by the USFWS in the letter of July 15, 2003 (Appendix C of this EIR), the following mitigation measure shall reduce project impacts to serpentine habitat to a less than significant level:

1. In order to replace the serpentine habitat lost with equivalent habitat, purchase 51 acres of currently unprotected serpentine habitat and fund its management as habitat in perpetuity.

_____ 18. Riparian Areas

A. Since the construction impacts within the riparian corridor have already occurred, the only mitigation available is to replace the riparian habitat removed. The following mitigation measure was identified to mitigate impacts to the riparian habitat removed:

1. The riparian habitat that was lost due to grading or other development activities within areas of canopy contiguous with riparian habitat shall be replaced along this same drainage at a ratio of 3:1. Pre-grading conditions on the site shall be determined by City Staff through the use of historic aerial photos and other historical documentation of the project site.

_____ 19. Ordinance-Size Trees

A. Since most of the impacts have already occurred, replacement is the only mitigation measure available that would reduce this impact to a less than significant level. The numerous trees planted on the golf course are primarily non-native, and do not offer replacement habitat values.

B. The following steps shall be taken to mitigate for lost ordinance-size trees:

1. Appropriate on-site locations for new trees shall be identified by a qualified botanist or arborist. The proposed riparian setback area offers a potentially suitable site for the planting of native tree species. Mitigation for the removal of non-native, ordinance species shall be incorporated into the landscaping plan for the proposed development or they shall also be mitigated for with native plantings in the riparian setback area; and

2. Lost native trees greater than six inches in diameter shall be replaced at a 5:1 ratio*. This ratio shall be necessary to compensate for replacement trees that do not survive, and for the habitat values lost while replaced trees are maturing. Planting stock shall be collected locally. Planting shall be conducted from November to January using small nursery stock. The replacement trees shall be installed in an environment suitable for their establishment and growth. These trees shall be irrigated and maintained for a period of not less than three years. The mitigation site shall be protected from future disturbance and the restoration effort shall be monitored for five years. Annual status reports shall be provided to the Director of Planning. The size of the trees lost shall be estimated by City Staff from aerial photographs and other historic documentation. The equivalent number and type of trees removed and the number, type, size, and health of the new trees planted on the project site will be evaluated to determine if the equivalent value of the trees removed is fully mitigated by the trees planted on the project site. If the value of the trees removed from the project site is not fully mitigated by the trees planted, additional native species trees will be planted on the project site, as determined by City Staff.

_____ 20. California Red-legged Frog Habitat/Aquatic Habitat

Appropriate mitigation shall include either improving the potential on-site breeding habitat (Mitigation measures 1, 2, 3 and 5 below) or providing an off-site conservation easement for California red-legged frogs (Mitigation measures 2, 3, 4 and 5 below).

A. Mitigation 1 - Compensation by Establishment of On-site Breeding Areas - The project shall restore and expand the presumed former breeding pond and broaden the band of setbacks for the creek and the potential breeding ponds. The broadening of the setback surrounding the creek and potential breeding ponds will increase the potential for adult and juvenile red-legged frogs to disperse and forage along a corridor between the creek and the southeastern and the westernmost ponds. Because approximately three acres of potential breeding ponds were lost, at least nine acres of breeding ponds shall be restored for red-legged frog habitat. Potential breeding habitat shall include emergent aquatic vegetation to provide substrates for egg laying and associated upland habitat for foraging. The upland habitat shall be a buffer (an undisturbed area that protects habitat from human activities) of 200 feet that is maintained from the water's edge of individual breeding ponds and from the centerline of the creek. No human disturbance, landscaping, irrigation, turf areas or lighting shall be placed within the buffer area. No vehicles or other equipment including power lawn mowers shall operate within the buffer zone. Additionally, if any nocturnal maintenance activities occur on the site, an exclusion fence shall be installed and maintained to avoid "take" of red-legged frogs from vehicular activities. Additionally, Mitigation 2 and 3 shall be implemented.

B. Mitigation 2 - Manage Non-Native Predator Species (primarily the bullfrog) - Bullfrogs are non-native predators that reduce the long-term viability of a red-legged frog population. Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) draw down any ponds that contain bullfrogs for two to three weeks in late September/early October. The timing of draw down shall be phased to ensure that red-legged frogs will continue to have available

suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs in this area.

C. Mitigation 3 - Maintain Water Quality of Breeding Ponds - Water quality shall be monitored for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the red-legged frog. The water quality parameters to be sampled shall be in accordance with monitoring requirements established by the Regional Water Quality Control Board and, at a minimum, shall include nitrate, ammonia, total kjehdahl nitrogen, total dissolved solids, oil and grease (parking lot runoff only), and all landscaping chemicals used by the golf course. Emergent vegetation (e.g. cattails) established around pond edges will provide at least some biological filtering of run-off water and reduce the inflow of this run-off. All parking lot drains and all subdrains beneath tees and greens that discharge into the ponds shall include filtration or other treatment measures to minimize the potential for direct discharge of golf course chemicals or other surface runoff contaminants.

D. Mitigation 4 - Provide a Conservation Easement - The project proponent shall establish a conservation easement for red-legged frogs at a "to-be-determined" location. The final configuration of the easement (at least 51.2 acres of suitable red-legged frog habitat) will depend on the final mitigation design, which will be developed in conjunction with the USFWS. This easement will be in perpetuity. A conservation easement may be purchased as a part of a larger mitigation bank.

As stated in the July 15, 2003 letter from the USFWS, the 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after evaluation the City of Morgan Hill agrees with the USFWS that this 35 acres of replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat due to exceptional quality, and also provides 35 acres of red-legged frog habitat, then only16.2 additional acres of currently unprotected red-legged frog habitat will need to be purchased and funded for management as habitat in perpetuity.

E. Mitigation 5 - Compliance with Resource Agencies - The project proponent shall formally consult with the USFWS to obtain a biological opinion that the continued operation of the golf course will not jeopardize the continued existence of the species and then be issued an incidental take permit. This formal consultation can take the form of a Section 7 (via a Federal action) or a Section 10 (Habitat Conservation Plan). Discussions with the USFWS will determine the appropriate vehicle to process this request.

_____ 21. California Tiger Salamander Aestivation/Breeding Habitat

Appropriate mitigation shall include either improving the potential on-site aestivation habitat and the breeding habitat on the westernmost ponds (Mitigation 1, 2, and 3) in order to expand the existing tiger salamander population or providing an off-site conservation easement for California tiger salamanders (Mitigation 4).

A. Mitigation 1 - Compensation by Establishment of On-site Breeding and Aestivation Habitat - The project shall restore and expand the presumed former breeding ponds and broaden the band

of setbacks for the potential breeding ponds. The broadening of the setback surrounding the potential breeding ponds will increase the potential for adult and juvenile tiger salamanders to disperse and forage around the breeding ponds. Because approximately three acres of potential breeding ponds were lost, at least three acres of breeding ponds shall be restored for tiger salamander breeding habitat. Potential upland aestivation habitat shall be provided around the breeding ponds. The upland habitat shall be a buffer (an undisturbed area that protects habitat from human activities) of 200 feet that is maintained from the water's edge of individual breeding ponds. Additionally, large woody debris and/or stones shall be placed within this buffer to encourage burrow construction by ground squirrels and/or gophers. No rodenticides shall be used to kill any ground squirrels and/or gophers in the buffer area. No human disturbance, landscaping, irrigation, turf areas or lighting shall be placed within the buffer area. No vehicles or other equipment including lawn mowers shall operate within the buffer zone. If any nocturnal maintenance activities occur on the site, an exclusion fence shall be installed and maintained to avoid "take" of tiger salamanders from vehicular activities. Additionally, Mitigation 2 and 3 shall be implemented.

B. Mitigation 2 - Manage Non-Native Predator Species (primarily the bullfrog) - Bullfrogs are non-native predators that reduce the long-term viability of a California tiger salamander population. Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) draw down any ponds that contain bullfrogs for two to three weeks in late September/early October. The timing of drawn down will be phased to ensure that tiger salamanders will continue to have available suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs on the site.

C. Mitigation 3 - Maintain Water Quality of Breeding Ponds - Water quality shall be monitored for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the red-legged frog. The water quality parameters to be sampled shall be in accordance with monitoring requirements established by the Regional Water Quality Control Board and, at a minimum, shall include nitrate, ammonia, total kjehdahl nitrogen, total dissolved solids, oil and grease (parking lot runoff only), and all landscaping chemicals used by the golf course. Emergent vegetation (e.g. cattails) established around pond edges will provide at least some biological filtering of run-off water and reduce the inflow of this run-off. All parking lot drains and all subdrains beneath tees and greens that discharge into the ponds shall include filtration or other treatment measures to minimize the potential for direct discharge of golf course chemicals or other surface runoff contaminants.

D. Mitigation 4 - Conservation Easement for California Tiger Salamanders - The project proponent shall establish a conservation easement for tiger salamanders at a "to-be-determined" location. The final configuration of the easement (at least three acres of ponds) and associated upland aestivation habitat will depend on the final mitigation design, which will be developed in conjunction with the CDFG. This easement will be in perpetuity. A conservation easement may be purchased as a part of a larger mitigation bank. Otherwise, the owner(s) may work with a land trust, preferably in the Mt. Hamilton Range Mountains to

the east, or the owner(s) shall develop their own off-site mitigation easement. Any and all easements shall have a legal commitment, be guaranteed management for the purposes of maintaining a California tiger salamander population, and be approved by the CDFG. Consideration will be given to crediting on-site ponds for tiger salamander habitat, if they meet the relevant criteria.

_____22. A "non-renewal notice" shall be filed by the City for the existing Williamson Act contract that is currently in force on the project site.

Other Conditions:

_____23. The golf course shall be open for private use only from April 16th to September 30th and play on the golf course shall be limited to a maximum of 36 rounds of golf per day, seven days per week, from sunrise to sunset. Players shall not be allowed to use golf carts. Golf carts shall be used on the golf course for maintenance purposes only.

_____24. As part of the Site, Architectural and Landscape application, and prior to the issuance of building permits for this project, the applicant shall submit a detailed landscape plan for review by the City. It shall be in the City's purview to determine if the row of trees along Foothill Avenue must be removed or diminished, or alternatively, that the trees are an appropriate part of the overall use of the site and can remain.

_____25. The existing drainage conduit located at Maple Avenue (identified in Exhibit 1 attached hereto) shall be redesigned and resized to prevent localized flooding, to the satisfaction of the City Engineer, prior to the issuance of building permits.

_____26. The existing culverts located at the private driveways downstream from the project site (identified in Exhibit 2 attached hereto) shall be resized to prevent localized flooding to the properties to the satisfaction of the City Engineer, prior to the issuance of building permits. The applicant shall coordinate all improvements with the County of Santa Clara.

_____27. Fertilizers and other agricultural chemicals shall be applied by means other than through the irrigation spray system to avoid generation of noxious odors to neighboring residences.

_____28. Any water tank required for fire suppression purposes shall be sited at a low elevation on the project site, to minimize impacts to the area view shed. Such tank shall be located adjacent to the main building areas and shall be visually screened by trees and other vegetation, to the satisfaction of the City.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE INSTITUTE GOLF COURSE AND MATHEMATICS CONFERENCE CENTER.

WHEREAS, the Draft Environmental Impact Report was received by the Planning Commission and City Council on December 22, 2003 for review and comment; and

WHEREAS, the Planning Commission conducted a workshop on the Draft EIR on January 27, 2004 and City Council conducted a public hearing on February 4, 2004, at which time public and agency comments were received; and

WHEREAS, subsequent to those reviews, the comments were evaluated and responses to those comments prepared; and

WHEREAS, the information contained in the Final to the Environmental Impact Report was reviewed and considered by the Planning Commission at a duly-notice Planning Commission meeting on May 25, 2004 and continued to a special meeting on June 1, 2004;

WHEREAS, the information contained in the Final EIR and in the amendments to the Final EIR was reviewed and considered by the City Council at a special meeting on June 9, 2004;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES RESOLVE AS FOLLOWS:

SECTION 1: FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL REGARDING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE INSTITUTE GOLF COURSE: The City Council hereby finds, determines and declares the findings of fact and statement of overriding considerations as set forth in the attached Exhibit "A"

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 7th Day of July, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

❦ CERTIFICATION ❦

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Special Meeting held on July 7, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

_____
IRMA TORREZ, City Clerk

EXHIBIT "A"

FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL REGARDING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE INSTITUTE GOLF COURSE

This document presents findings in accordance with Sections 15091 and 15093 of the California Environmental Quality Act ("CEQA") Guidelines and Section 21081 of the Public Resources Code. Under CEQA, the City of Morgan Hill ("the City") must prepare written findings of fact for each potentially significant adverse environmental effect identified in a final environmental impact report and explain whether the project has been changed to avoid or substantially reduce the magnitude of the impact. The findings must describe the specific reasons for rejecting identified mitigation measures and project alternatives. CEQA also requires that the City identify when the responsibility for avoiding or reducing a significant environmental effect belongs to another agency. In some cases, the City can make a Statement of Overriding Considerations when specific economic, legal, social, technological, or other considerations are identified that make avoidance or reduction of the significant environmental effects infeasible.

These Findings concern the Environmental Impact Report ("EIR"), prepared by the City, entitled "Final Environmental Impact Report, The Institute Golf Course." This document was prepared to satisfy the City's responsibilities under CEQA.

The City Council hereby finds, determines, and declares as follows:

I. BACKGROUND

A. Project Description

1. The proposed project is a Planned Development Rezoning to allow for the continued operation and maintenance of an existing 18-hole golf course. The approximate 192-acre project site is located within the city limits of Morgan Hill, east of Highway 101 on the southeast corner of Foothill Avenue and Maple Avenue. The facilities proposed by the Applicant include the use of the renovated hanger building as a maintenance building; the renovation of the existing 58,946-square foot restaurant building on the site (former Flying Lady restaurant) for use as the headquarters of the American Institute of Mathematics; and the renovation and use of other structures on the project site as support facilities, including a residence for mathematicians, a restroom, caretaker's residence, equipment storage, food service, a lecture hall, offices, and a guard building.

2. The grading and construction of the existing golf course was completed in advance of obtaining all of the required permits and approvals from the City. In April 1997, the City of Morgan Hill issued a grading permit for the reconstruction of an existing 9-hole golf course on the project

site. The April 1997 permit also allowed for the construction of a new access driveway and an irrigation pond. The approved grading plan allowed for a maximum cut/fill of 105,000 cubic yards of material and was limited to an area of approximately 40 acres. The project proponent expanded grading operations to construct the existing 18-hole golf course, which encompasses almost the entire 192-acre project site. The amount of material graded on the property is estimated to have been in excess of 500,000 cubic yards. The project proponent graded approximately 150 acres of the site and moved more than 395,000 cubic yards of material in excess of the grading permits and approvals issued by the City.

3. In addition to grading most of the project site, the following improvements were made during the construction of the golf course: a series of seven ponds/streams were constructed that serve as golf course amenities and an equalizing reservoir for the irrigation system, approximately 53 catch basins were built to collect storm water from the course and drain to the ponds; hundreds of landscape trees were planted throughout the site, many of which are redwood trees planted along Foothill Avenue; the pre-existing building (the "hanger") was renovated to serve as the golf course maintenance building; and new asphalt access driveways to the existing restaurant building and the maintenance building were constructed.

4. Because the golf course is already built, and was almost completed before work on the EIR began, the evaluation of pre-project conditions is limited by the information available from historic records. In addition, further construction on the project site was taking place during the preparation of the EIR. Development known to occur during the preparation of the EIR included construction of a wastewater treatment facility, a fishing pond, and various golf course features such as greens, tee boxes, and sand traps. In addition, various earthmoving activities occurred on the site while the EIR was in preparation.

5. After discovery by the City that the golf course had been largely constructed without the required permits or environmental review, the City began consideration of its continued operation under a site review amendment and conditional use permit. A Temporary Use Permit ("TUP") was granted to the project proponent to allow the following maintenance activities on the golf course: irrigating the grass, shrubs, and trees; mowing the grass; and trimming the shrubs and trees. The TUP expired May 25, 2001. Subsequently, a request for a Planned Development Rezoning was submitted to the City by the project proponent on March 3, 2003.

6. The City issued a further TUP to the Applicant on August 27, 2003 for limited operation and maintenance of the golf course through March 31, 2004. It was anticipated at that time that the period of the TUP would be

sufficient for completion of the EIR. However, additional time was required for the processing of that EIR due to the need to respond to extensive comments received on a Revised Draft EIR. Accordingly, an additional TUP was issued in April 2004 for the purpose of obtaining continuation of the interim protections, pending the completion of the EIR process.

7. The project proponent has stated that the golf course will be open for private use only from April 16th to September 30th and that play on the golf course will be limited to a maximum of 36 rounds of golf per day, seven days per week, from sunrise to sundown. Players will not be allowed to use golf carts. Golf carts will be used on the golf course for maintenance purposes only.

8. The Planned Development Rezoning application that was submitted to the City also identifies "Charity Golf Tournaments" as a proposed use. The City will not approve zoning for the project site that includes golf tournaments as a proposed use.

9. The Project is proposed to accomplish the following objectives and will confer the following benefits:

a) The project proponents' objectives for the proposed project are to operate a private 18-hole golf course, the headquarters of the American Institute of Mathematics, and conference facilities on the project site.

b) The City's objectives for this project are to develop the project site in a manner that is consistent with the goals and policies of the City of Morgan Hill, as reflected in its adopted General Plan and Zoning Ordinance; protect species listed or proposed for listing under the federal Endangered Species Act ("ESA") and the California Endangered Species Act ("CESA"); and implement the mitigation measures and Conditions of Approval specified in the Mitigation and Monitoring Plan. The achievement of these objectives will be a public benefit.

c) The establishment of the headquarters of the American Institute of Mathematics within the City of Morgan Hill will be a public benefit in itself to the City, and the Institute will also provide additional public benefits through its seminars, outreach programs, and involvement with local schools. The approval of the continued use of the site as a golf course will create an attraction for the Institute that will promote its success and enhance its ability to provide the public benefits noted.

10. As discussed in the EIR, the golf course as constructed does not comply with the City's General Plan. Specific mitigation measures that are not currently proposed in the project have been identified in the EIR that will

render the project consistent with the General Plan if all of these mitigation measures are required as conditions of project approval. The required mitigation measures are incorporated into the Zoning Amendment Resolution under Exhibit "C". With the application of these mitigation measures, the City Council finds that the proposed Project is consistent with the City of Morgan Hills' General Plan. The City Council further finds that the proposed Project will not disrupt or divide the physical arrangement of an established community, will not conflict with adopted environmental plans and goals of the community where the Project will be located, and will not conflict with any established recreational, educational, religious, or scientific uses of the area.

B. The Final EIR.

1. The City as the lead agency for the Project has caused to be prepared a Final EIR for the proposed Project, based on the requirements of the California Environmental Quality Act (Public Resources Code §§ 21000-211177) and the Guidelines for CEQA (Sections 15000-15387, Administrative Code, Title 14, Chapter 3). Pursuant to state CEQA Guidelines Section 15132(e), the Final EIR consists of the following documents and materials: the "Draft Environmental Impact Report, The Institute Golf Course," issued in January 2003; the "Revised Draft Environmental Impact Report for the Institute Golf Course," issued in December 2003; and the "Final Environmental Impact Report, The Institute Golf Course," issued in May 2004, which includes the comments on the Revised Draft EIR and the City's responses thereto.

2. Copies of the Final EIR are on file in the City's library and, along with the planning and other City records, minutes and files constituting the record of proceedings, are incorporated herein by this reference. The City Council designates the City Clerk of the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, CA 95037-4128, as the custodian of documents and record of proceedings on which the decision was based. Since the text of the Revised Draft EIR was revised in certain respects in the Final EIR, references in these Findings to specific pages of the EIR will be to the starting page of the Revised Draft EIR where the topic is addressed, with the revisions in the Final EIR (and amendments thereto) assumed by such references.

3. The initial Draft EIR was circulated for public review and comment from January 24 to March 10, 2003. In part based on comments requesting additional information, the City decided to prepare a revised Draft EIR. The Revised Draft EIR was circulated for public review and comment for an additional 45 day period.

4. The City Staff has held meetings with various regulatory agencies and members of the public to review the Project and the Draft EIR. Individual City Council, Planning Commission and City Staff members

have appeared at local meetings with press and service and community representatives to discuss the Project.

5. On July 30, 2003, the City Staff conducted a special meeting with the United States Fish and Wildlife Service ("USF&WS"), the California Department of Fish and Game ("CDF&G"), the California Regional Water Quality Control Board for the Central Coast Region ("RWQCB"), and the Santa Clara Valley Water District ("SCVWD") to receive their input on the then pending application for a TUP. Subsequently, written comments were received from USF&WS, SCVWD and RWQCB setting forth their respective recommendations for conditions that should be imposed in the issuance of the TUP for the Project to avoid adverse impacts to federal and state threatened and endangered species, water quality and other environmental resources. The conditions recommended by these agencies were considered not only in connection with the issuance of the TUP but also in connection with the development and refinement of mitigation measures proposed for adoption in the EIR. Further input was received from these agencies in connection with the issuance of the further TUP in April 2004.

6. In issuing the TUP's, the City determined in each instance that the issuance of a TUP is the best means for preserving the status quo pending the completion of the EIR process and the City's decision on the pending applications and other matters under review in the EIR. The City otherwise has limited jurisdiction over a property owner's maintenance of existing landscaping, including watering, mowing, and the application of pesticides and herbicides, and the TUP's provided a mechanism for interim protection against any impacts associated with these activities on this property. The conditions of approval set forth in the TUP's provided greater protection for the environment in this interim period prior to the completion of the EIR process than would have been true if the TUP's were denied and none of these conditions were required to be implemented. The allowance of interim maintenance of the golf course also ensured that permanent or costly damage would not occur in the interim to the golf course whose continued operation is the subject of the current decision by the City. The City also determined that none of the conditions of approval for the TUP would foreclose any options for mitigation or alternatives under consideration in the EIR or otherwise affect the decision on the applications and other matters under review in the EIR. The instant findings and the accompanying resolution approving the Planned Development Rezoning supercede in all respects the prior TUP's.

7. The City Planning Commission conducted a workshop on the Revised Draft EIR on January 27, 2004, and the City Council conducted a public hearing on February 4, 2004, at which time public and agency comments were received.

8. The Final EIR issued in May 2004 contains the response to the public and agency comments received regarding the Revised Draft EIR and reflects revisions to the Revised Draft EIR in response to those comments. Section IV of the Final EIR shows by underlining and strikeouts where portions of the Revised Draft EIR were modified.

9. On May 25 and June 1, 2004, the City Planning Commission conducted a further public hearing for the purpose of reviewing and considering the information contained in the EIR, and considering an appropriate recommendation to make to the City Council regarding the proposed Project. The Planning Commission recommended certification of the EIR and certain changes in the mitigation measures set forth in the Conditions of Approval.

10. The City has prepared two amendments to the Final EIR, dated May 28 and June 4, 2004, based on additional information and comments received after the circulation of the Final EIR, including comments of the Planning Commission at its hearings. These amendments together contained revisions to the following sections of the EIR: Section II.C, Vegetation and Wildlife; Section II.D, Hydrology and Water Quality; and Section III, Secondary Impacts. In addition, a revised version of the Conditions of Approval ("Revised 7/1/04") submitted to the City Council for consideration at its meeting on July 7, 2004 contains further revisions to the mitigation measures in the EIR and shall also be deemed an amendment to the Final EIR. The revisions in these amendments supercede certain revisions previously identified in the Final EIR.

11. On June 9, 2004, the City Council conducted a public hearing for the purpose of reviewing and considering the information contained in the EIR and the administrative record, and for the purpose of considering the proposed Project. The matter was continued to July 7, 2004 for further consideration by the City Council.

12. As part of the accompanying resolution, the City Council is also approving a Mitigation and Monitoring Plan ("MMP") pursuant to Public Resources Code section 21081.6, which plan is designed to ensure compliance with Project changes and mitigation measures imposed to avoid or substantially lessen the environmental effects identified in the Final EIR, and which program is incorporated herein by this reference.

13. The City Council has reviewed and considered the information contained in the Final EIR and record of proceedings, including, but not limited to, staff reports, oral and written comments given at public hearings on the proposed Project or otherwise received by the City, the responses thereto contained in the Final EIR, the additional information presented to the Planning Commission and its recommendations, the amendments to the Final EIR; and the Conditions of Approval, and all other matters deemed

material and relevant before considering the proposed Project for approval. The Final EIR reflects the independent judgment of the City.

II. SIGNIFICANT IMPACTS WHICH CAN BE MITIGATED TO A LESS THAN SIGNIFICANT LEVEL

A. General Findings

1. The proposed Project was considered to have potentially significant impacts on geology and soils, vegetation and wildlife, hydrology and water quality, water supply, noise, hazardous materials, air quality. Potentially significant impacts were also identified in the EIR under the headings of secondary and cumulative impacts. The City Council finds that, in response to each significant effect identified in the EIR and listed in this Section II, all feasible changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen these environmental effects, except for the cumulative impact on agricultural resources (for which a statement of overriding considerations is made in Section V below). With implementation of the proposed mitigation measures described in the EIR and in the Conditions of Approval, the proposed Project is determined to have less-than-significant impacts on these resources, except as noted above.

2. Those mitigation measures proposed by the Applicant as part of the project and identified in the Revised Draft EIR as necessary to mitigate impacts to an insignificant level are hereby adopted by the City Council. Mitigation measures identified in the Revised Draft EIR as "Not Presently Incorporated into the Proposed Project," are with modifications and additions set forth in the Final EIR and amendments thereto hereby adopted as conditions of the project approval (referred to herein as "Conditions of Approval" and set forth in Exhibit "C" attached to the Zoning Amendment Resolution). The City Council finds that the changes to these mitigation measures in the Final EIR and amendments thereto constituted clarifications or the elimination of elements unnecessary to the effectiveness of the mitigation, and that these mitigation measures will remain successful in reducing impacts to a less than significant level.

3. Some of the mitigation measures referred to above require or contemplate action by other agencies as part of the implementation of the measure. These particular actions are within the responsibility and jurisdiction of these other agencies, and these agencies have either taken these actions or can and should do so.

4. Mitigation of impacts to endangered species will also require that the project proponent purchase off-site replacement habitat and obtain an Incidental Take Permit from the United States Fish & Wildlife Service (USF&WS), to the extent that the Service deems such a permit

necessary.

5. The EIR evaluates the on-going operation of the golf course that was built on the site as it was built. The EIR also describes what were probably the physical impacts of building the golf course, compared to the environmental conditions that are believed to have existed before the golf course was built, based on what remains of those conditions, evaluation of prior condition aerial photographs and historical information provided by the project proponent. In the section entitled "Secondary Impacts" of the Revised Draft EIR (page 105), these impacts of the construction of the golf course are described and appropriate mitigation is proposed to render these impacts less than significant.

B. Land Use Impacts.

1. The proposed project is not expected to result in significant land use impacts to surrounding land uses. The City Council finds that this is a less than significant impact.

2. The proposed project will not result in the loss of designated important farmland. The City Council finds that this is a less than significant impact.

3. Under the Land Use Impacts discussion, the EIR notes that over 158 acres of the project site is under a Land Conservation Act (Williamson Act) contract that will continue to renew indefinitely until non-renewal is filed. Properties under LCA contract are committed to agricultural or other compatible uses and, in exchange, receive property tax advantages. The LCA contract for the project site (see Appendix A in the Revised Draft EIR) does not allow a golf course. To achieve conformance with the LCA, a Notice of Non-renewal or Cancellation of the Williamson Act contract is required. Said contract may be terminated by the City by a notice of non-renewal within 60 to 90 days before next January 1 (in which case, it expires as of that date). Accordingly, by the accompanying resolution the City Council has approved the non-renewal of the contract, and instructed its staff to provide notice of such non-renewal pursuant to the terms of the contract. The City Council finds that the termination of this contract is a less than significant impact.

4. The visual changes resulting from the proposed project, including the Applicant's planting of trees on the site, will not result in a significant environmental impact. The City Council finds that this is a less than significant impact. Nevertheless, the Conditions of Approval require the Applicant to submit a detailed landscape plan for review by the City, with authority reserved to the City to determine if the row of trees along Foothill Avenue should be removed or diminished.

C. Geology and Soils Impacts

1. The proposed project may result in erosion and siltation. Specific mitigation measures have been identified on pages 27 and 70 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made some of these measures part of the project, they are hereby imposed as Conditions of Approval of the Project.

2. The proposed project could result in significant seismic impacts associated with the structural integrity of the existing restaurant building. Without mitigation, this could be a significant impact. The existing restaurant building is currently closed, and the project proponent has committed as mitigation for this potential impact that the building will not be occupied until the structural stability of the building is confirmed by a certified engineer. The City Council finds that with this mitigation this is a less than significant impact.

D. Vegetation and Wildlife Impacts

1. Play on the golf course, golf course maintenance, and renovation of the restaurant building and other structures on the project site will not impact special-status plant species. The City Council finds that this is a less than significant impact.

2. On-going use and maintenance of the golf course and the proposed creation and use of the fishing pond may have a substantial adverse effect on California red-legged Frogs, a threatened species listed under the Federal Endangered Species Act. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 50 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

3. On-going use and maintenance of the golf course, and the proposed fishing pond may have a substantial adverse effect on California tiger salamanders, a Candidate species listed under the Federal Endangered Species Act. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 52 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

4. On-going use and maintenance of the golf course, and the proposed fishing pond may have a substantial adverse effect on western pond turtles, a Species of Special Concern listed under the California Endangered Species Act. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 53 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

5. Future construction or certain maintenance activities on the project site may result in the "take" of burrowing owls. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 46 of the EIR that will reduce this impact to a less than significant level.

6. Future construction on the project site could disturb nesting raptors, which would result in the loss of eggs, young or the reproductive effort. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 46 of the EIR that will reduce this impact to a less than significant level.

7. The renovation and/or use of the existing restaurant building or other buildings on the site could disturb nesting swallows, which would result in the loss of eggs, young or the reproductive effort. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 47 of the EIR that will reduce this impact to a less than significant level.

8. The renovation and/or use of the existing restaurant building or the removal of large trees on the site may disturb or destroy roosting pallid and/or Townsend big-eared bats. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 47 of the EIR that will reduce this impact to a less than significant level.

9. On-going use and maintenance of the golf course and on-site pavement may degrade water quality downstream of the project site, which provides habitat for several special-status species. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 74 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

10. Overall, the City Council finds that potential impacts to listed species and other biological impacts will be avoided through compliance with the above-referenced mitigation measures. These measures will require the Applicant, inter alia, to restore the riparian buffer areas along the Corralitos Creek, impose operational limits to protect listed species such as limiting the hours of operation of mechanical equipment to daylight, when the animal species are less active, and through monitoring and removal of predatory bullfrog and fish species.

11. The mitigation measures referenced above and in the EIR are not a substitute for obtaining incidental take authorizations, to the extent required, from the USF&WS for continued operation and maintenance of the golf course. This requirement is set forth in the Conditions of

Approval.

E. Hydrology and Water Quality Impacts

1. Golf course encroachment into the floodplain will not result in flood related property loss or a hazard to human life. The City Council finds that this is a less than significant impact.

2. The project will result in higher localized peak runoff rates, as compared with pre-development conditions, in the vicinity of the main entrance on Foothill Avenue. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 73 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

3. Future grading may increase soil erosion on the site. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 73 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

4. The proposed project will result in a net increase of non-point source pollutants entering surface waters. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 74 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

5. On-going use and maintenance of the golf course will substantially increase existing nitrogen levels in the groundwater. This could adversely affect nearby drinking water wells, as well as the aquifer as a whole. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 75 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

6. On-going use and maintenance of the golf course will result in potentially higher nitrogen loading to downstream surface waters, including Corralitos Creek, San Martin Creek and Llagas Creek. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 75 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

7. On-going use and maintenance of the golf course could contaminate on-

site drainages and the downstream reaches of Corralitos Creek, San Martin Creek and Llagas Creek with pesticides, herbicides, fertilizers and other chemicals, and could contaminate the groundwater below the site. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 76 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

8. The compliance with the terms and specific conditions of the SWPPP will reduce the impact from future maintenance and construction activities to a less than significant level. The City Council finds that this is a less than significant impact.

9. Discharge of water from the golf course lakes to Corralitos Creek or to the drainage along Foothill Avenue could potentially impact the water quality and beneficial uses of Corralitos Creek, San Martin Creek and Llagas Creek. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 78 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

10. The proposed project will not change the groundwater recharge characteristics of the project site. The City Council finds that this is a less than significant impact.

F. Water Supply Impacts

1. Irrigation of the proposed project may substantially deplete groundwater resources. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 84 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

2. The proposed project does not have an acceptable source of potable water, which may present a health hazard to workers and visitors at the project site. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 83 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

3. The fire/irrigation water supply may not be sufficient to serve the additional fire water requirements of the proposed headquarters of the American Institute of Mathematics, which may result in property loss or a hazard to human life. Without mitigation, this could be a significant

impact. Specific mitigation measures have been identified on page 84 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

G. Traffic Impacts

1. The proposed project will not generate traffic that would exceed the capacity of the existing roadway system. The City Council finds that this is a less than significant impact.

H. Noise Impacts

1. The proposed project will not significantly increase or be affected by ambient noise levels in the project area. The City Council finds that this is a less than significant impact.

2. The proposed project may result in significant short-term noise impacts during any future construction. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 91 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

I. Hazardous Material Impacts

1. Management of hazardous materials and disposal of hazardous waste in conformance with federal, state, and local regulations will not result in a significant impact to the environment or the people occupying the site. The City Council finds that this is a less than significant impact.

2. The existing structures on the project site may include materials containing asbestos or lead based paint. Demolition or remodeling may release air-borne asbestos and/or lead dust, causing a significant impact to workers or other persons in the area. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 94 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

J. Air Quality Impacts

1. Vehicle trips generated by the project would not exceed BAAQMD thresholds; therefore, the proposed project is not expected to have a significant impact on air quality. The City Council finds that this is a less than significant impact.

2. Construction of any remaining components of the proposed project could

result in significant short term air quality impacts associated with dust generation. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 99 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

3. The proposed project may expose members of the public to objectionable odors. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 100 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

K. Cultural Resources Impacts

1. The proposed project will not result in the future disturbance of cultural resources. The City Council finds that this is a less than significant impact.

L. Energy Impacts

1. The continued operation of the golf course and proposed use of the existing buildings on the site will not require a substantial amount of energy. The City Council finds that this is a less than significant impact.

M. Utilities Impacts

1. The continued operation of the golf course and proposed use of the existing restaurant building will not result in significant environmental impacts associated with providing sanitary sewer, electricity and gas, solid waste, or telephone services. The City Council finds that this is a less than significant impact.

N. Public Services Impacts

1. The development of the proposed project will not result in the need for additional fire protection or police facilities. The City Council finds that this is a less than significant impact.

O. Secondary Impacts

1. The impacts listed previously are the direct result of the continued operation and maintenance of the golf course and the construction of additional facilities related thereto. If the proposed project is approved as it was built, a number of impacts that occurred as a result of constructing the project will not be reversed, reduced or mitigated. Secondary impacts are the loss of habitat for special-status plant species, loss of riparian habitat, loss of significant trees, and loss of endangered animal

species habitat. As with the direct project impacts, mitigation measures are included in the project or as Conditions of Approval that will reduce all secondary impacts to a less than significant level.

2. Loss of Habitat for Special-Status Plant Species. The construction of the golf course resulted in the permanent loss of habitat that may have contained Special-Status Plant Species. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 111 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

3. Riparian Habitats. Golf course development directly adjacent to riparian and drainage areas located on the site caused significant impacts to riparian habitats, and has also removed riparian habitat. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 111 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

4. Ordinance-Size Trees. Golf course development resulted in the removal of ordinance size trees. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 112 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

5. California Red-legged Frog Habitat/Aquatic Habitat. Golf course development resulted in the loss of California red-legged frog breeding habitat. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 112 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

6. California Tiger Salamander Aestivation/Breeding Habitat. Golf course development resulted in the loss of California tiger salamander aestivation/breeding habitat. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified on page 114 of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

P. Cumulative Impacts

1. Other Developments Considered. The cumulative impact assessment in

the EIR is based, among other things, upon the following: (1) a list of approved and pending projects in the Morgan Hill area east of Highway 101; (2) a biological opinion prepared by the US Fish & Wildlife Service, dated July 31, 2001, which addresses cumulative biological impacts from development projects elsewhere in Santa Clara County; (3) other golf courses in the vicinity; and (4) other activities likely to occur on the project site.

2. Significant Cumulative Impacts Mitigated. The cumulative project impacts which are deemed potentially significant in the EIR are the same as those identified in the direct and secondary impacts analysis of the EIR. The mitigation measures included in the project or in the Conditions of Approval for the project's direct and secondary impacts will reduce cumulative impacts to a less than significant level, with the exception of the cumulative loss of agricultural land.

3. Agricultural Land. The proposed project would contribute to a significant cumulative loss of agricultural land in the project area and Santa Clara County. Without mitigation, this could be a significant impact. There is no mechanism in place to achieve mitigation for the identified cumulative loss of agricultural land. The City Council finds that this is a significant unavoidable cumulative impact.

4. Special-Status Plant Species. The construction of the golf course, and its continued operation as proposed, would contribute to a significant cumulative loss of special-status plant species (serpentine) habitat. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified in Section II.C, Vegetation and Wildlife of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

5. Special-Status Animal Species. The construction of the golf course, and its continued operation as proposed, would contribute to a significant cumulative loss of special-status animal species habitat. Without mitigation, this could be a significant impact. Specific mitigation measures have been identified in Section II.C, Vegetation and Wildlife of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

6. Groundwater Quality. The proposed project will not contribute to a significant cumulative groundwater quality impact. The City Council finds that this is a less than significant impact.

7. Runoff. The proposed project will contribute to impacts resulting from significant cumulative increases in surface water runoff, including flooding. Without mitigation, this could be a significant impact. Specific

mitigation measures have been identified in Section II.D, Hydrology and Water Quality of the EIR that will reduce this impact to a less than significant level. Although the Applicant has not made them part of the project, they are hereby imposed as Conditions of Approval of the Project.

8. Water Supply. The proposed project will not contribute to a significant cumulative water supply impact. The City Council finds that this is a less than significant impact.

Q. Growth Inducing Impacts

1. The proposed golf course will increase the desirability of residential development in the surrounding area, adding an incentive to residential developers. Higher land values resulting from the project could encourage other land owners to abandon agriculture, and apply for General Plan amendments to subdivide their parcels to construction housing. A General Plan Amendment however, would require separate environmental review, as would any subsequent development. The project does not involve the extension of additional water or sewer lines or a new roadway to the project site; therefore, it will not induce growth by facilitating the creation of infrastructure. For this reason, the development of the proposed project will not have a significant growth inducing impact.

III. SIGNIFICANT IMPACTS WHICH CANNOT BE FULLY MITIGATED.

A. With one exception, the City Council finds that the EIR identifies no significant environmental effects of the Project which cannot be mitigated to levels of insignificance and that all impacts will either be avoided or reduced to a level that is both insignificant and acceptable. All mitigation measures which are included in the proposed Project as identified in the EIR or in the Conditions of Approval (whether or not they are expressly designated as mitigation measures), or which are referenced in these Findings, or which are included in the mitigation monitoring program shall be deemed adopted as part of the City Council's approval of the Project and certification of the EIR.

IV. PROJECT ALTERNATIVES

A. The CEQA Guidelines require that an EIR describe a range of reasonable alternatives to a project, or to the location of a project, which could feasibly attain the basic objectives of the project, and to evaluate the comparative merits of the alternatives. CEQA Guidelines also require that the range of alternatives considered include a "No Project" alternative. In addition, an alternative which includes on-site measures to reduce most of the significant impacts identified for the proposed project was also developed, based on the "mitigation not currently incorporated in the proposed project" that is

described throughout the EIR. The analysis of an alternative location for the golf course was not undertaken because the project has already been built on the project site. Each of these alternatives is discussed briefly below. For comparative purposes, the objectives of the proposed Project are set forth in Section I.A.9 of these findings, and impacts are analyzed in Section II above.

B. The City Council certifies that the EIR describes a reasonable range of alternatives to the Project, and the City Council has evaluated the comparative merits of the alternatives and rejected them in favor of the proposed Project (with the mitigation imposed that is part of the project and that imposed by the Conditions of Approval) as summarized below.

C. No Project Alternative

1. The No Project Alternative includes the development allowed by the grading permit issued in 1997 and the conversion of the remainder of the project site developed with the existing golf course (approximately 150 acres) to pre-grading conditions. Pre-grading conditions on the site would be determined through the use of historic aerial photos and other historical documentation of the project site. The No Project Alternative could avoid the significant impacts that are anticipated to occur as a result of allowing the existing 18 hole golf course to remain and continue to operate. However, it would not mitigate all of the impacts that occurred as a result of construction of the golf course. In addition, restoring the land to pre-grading conditions would require a substantial amount of grading which would itself result in substantial environmental impacts. The extensive mitigation measures that have been adopted by these findings for approval of the project provide a means of mitigating the impacts of the prior construction and an acceptable basis for continued operation and maintenance of the golf course. For these reasons, the No Project Alternative is rejected in favor of the proposed project as mitigated herein.

D. Reduced Impact On-Site Alternative.

1. The Reduced Impact On-Site Alternative would avoid or reduce all identified impacts to a less than significant level, except for the loss of serpentine habitat and the cumulative loss of agricultural land. It should be noted that the elements included in this alternative include some of the "Mitigation Measures Not Currently Incorporated Into the Proposed Project," discussed elsewhere in the EIR. This alternative includes all of the mitigation that can be implemented on-site (without off-site elements). Many of these elements could be incorporated into the project as conditions of approval, part of the permitting process. This alternative is rejected by the City Council because the proposed project as mitigated herein contains mitigation for the loss of serpentine habitat and equivalent mitigation for the other impacts.

E. Environmentally Superior Alternative

1. If the mitigation in the proposed project were limited to that proposed by the Applicant as part of the project, then the Reduced Impact On-Site Alternative would be the environmentally superior alternative under CEQA. However, as noted above, that alternative does not contain all of the mitigation measures necessary to reduce all impacts to a level of insignificance, and the loss of serpentine habitat (in addition to the cumulative loss of agricultural land) remains unmitigated. Since these findings adopt all of the mitigation measures set forth in the EIR and the Conditions of Approval, including mitigation for the loss of serpentine habitat, the proposed Project as mitigated and conditioned is the environmentally superior alternative.

V. OVERRIDING CONSIDERATIONS.

A. The City Council has determined that with one exception all impacts which are significant can be mitigated to levels of insignificance. Although not significant, there are residual levels of impacts which remain unavoidable.

B. With respect to the cumulative impact of loss of agricultural lands, the City Council has determined that impact is significant and has further determined that there are no alternatives or further mitigation measures which are feasible and capable of mitigating this impact to a level of insignificance. The City Council further finds that the benefits of the proposed Project outweigh this unavoidable adverse environmental effect and that such effect is acceptable when balanced against the benefits of the Project, even after giving greater weight to its duty to avoid the environmental impacts, and to protect the environment to the maximum extent feasible. This determination is made based upon the public benefits identified in the EIR and record of proceedings as flowing from the Project, including but not limited to those set forth in section I.A.9 of these findings above.

C. In the event that any of the other Project impacts are deemed significant, the City Council has also determined that there are no other feasible alternatives or further mitigation measures which are feasible and capable of mitigating these impacts to levels of insignificance, and that overriding considerations favoring the proposed Project's approval exist. The City Council specifically finds that the benefits of the proposed Project outweigh any such unavoidable adverse environmental effects and that such effects are acceptable when balanced against the benefits of the Project, even after giving greater weight to its duty to avoid the environmental impacts, and to protect the environment to the maximum extent feasible. This determination is made based upon the public benefits identified in the EIR and record of proceedings as flowing from the Project, including but not limited to those set forth in I.A.9 of these findings above.

VI. NO SUPPLEMENTAL EIR/EIS REQUIRED.

A. The City Council finds that there is substantial evidence to support a conclusion that no significant new information has been added to the Final EIR so as to warrant recirculation pursuant to Public Resources Code § 21092.1. This finding is based upon all the information presented in the EIR and record of proceedings.

B. The changes and new information provided in the Final EIR include those set forth in the Final EIR itself and the amendments to the Final EIR, dated May 28 and June 4, 2004 and included in the Conditions of Approval ("Revised 7/1/04").

C. The City Council finds that the new information added to the Final EIR did not change the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the City has declined to implement. None of the new information added to the Final EIR disclosed any new significant environmental impact which would result from the project or from a new mitigation measure proposed to be implemented; or that any substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; or that a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project. The City Council further finds that the new information added to the Final EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

VII. SUBSTANTIAL EVIDENCE SUPPORTING FINDINGS

A. Substantial evidence supporting each and every finding made herein is contained in the EIR and/or record of proceedings. Omission of reference in these findings to any evidence in the EIR and/or record of proceedings is not intended to exclude that evidence as supporting these findings.

B. The findings and evidence cited in the Conditions of Approval are hereby incorporated into these findings.

C. In making these findings, the City Council has relied upon the expertise of a variety of independent technical consultants to the City, and the expertise of the City's Staff. The City Council has also carefully considered the evidence submitted by the Applicant and other interested parties. To the extent that evidence consists of expert opinions that differ from the opinions of the City's outside consultants and Staff, at most it represents a disagreement of experts, which is adequately reviewed in the EIR. Based on its review, the City Council has determined that the opinions of its outside consultants and Staff are valid and are hereby accepted. In some instances, the City Council has

also relied on the expertise of state and federal regulatory agencies who have provided comments on the Revised Draft EIR and other actions related to the project.

D. To the extent that alternatives or mitigation measures were proposed by the Applicant or other interested parties that differ from the mitigation adopted herein, the City Council specifically rejects these proposals based on the substantial evidence in the record supporting the mitigation adopted as sufficient and necessary to mitigate impacts to a less than significant level.

VIII. MITIGATION AND MONITORING PLAN

A. The proposed MMP for the Institute Golf Course Project will be adopted prior to any approval of the project.